

## NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE  
NUMBERS

NOTICE FILE NUMBER

Z-

REGULATORY ACTION NUMBER

EMERGENCY NUMBER

2009-0819-02E

For use by Office of Administrative Law (OAL) only

2009 AUG 19 AM 11:26

OFFICE OF  
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY

California Department of Social Services

AGENCY FILE NUMBER (if any)

ORD #0508-03

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER		PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Division 31, Grievance Review Procedures		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT 31-021 AMEND 31-003, 31-410, and 31-501 REPEAL	
TITLE(S) MPP			
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective 30th day after filing with Secretary of State <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> §100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Sandra Ortega, Manager, ORD		TELEPHONE NUMBER 657-2586	FAX NUMBER (Optional) 654-3286
		E-MAIL ADDRESS (Optional)	

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

TYPED NAME AND TITLE OF SIGNATORY  
ROBERT L. GARCIA, Chief Deputy Director

8/18/09

For use by Office of Administrative Law (OAL) only

Amend Section 31-003 to read:

31-003      DEFINITIONS – FORMS (Continued)

31-003

(s)    (1)    (Continued)

      (2)    SOC 832 (Rev. 5/08) Notice of Child Abuse Central Index Listing

      (3)    SOC 833 (Rev. 3/08) Grievance Procedures for Challenging Reference to the Child Abuse Central Index

      (4)    SOC 834 (Rev. 6/08) Request for Grievance Hearing

(t)    (Continued)

Authority Cited: Gomez v. Saenz Settlement Agreement and Court Order, Case No: BC284896, Nicholas v. CDSS and Marin County, Case No. CIV092626 and Sections 10553, 10554, and 10850.4, Welfare and Institutions Code.

Reference:      Section 11169, Penal Code and Section 827, Welfare and Institutions Code.

Adopt Section 31-021 to read:

31-021      CHILD ABUSE CENTRAL INDEX (CACI) GRIEVANCE  
PROCEDURES

31-021

- .1    Within five (5) business days of submitting an individual's name to the Department of Justice (DOJ) for listing on the CACI pursuant to Section 31-501.4, the following forms shall be sent to the individual at his/her last known address:
  - .11    The Notice of Child Abuse Central Index Listing (SOC 832).
  - .12    Grievance Procedures for Challenging Reference to the Child Abuse Central Index (SOC 833), and
  - .13    Request for Grievance Hearing (SOC 834).
- .2    Request for a Grievance Hearing
  - .21    The complainant shall send by mail, fax or in person, a completed SOC 834 form, or a written request for grievance hearing that includes all of the information required under Section 31-021.213, signed by the complainant to request a grievance hearing. This must be received by the county within thirty (30) calendar days of the date the complainant became aware of the county decision. Failure to send the completed SOC 834 form within the prescribed timeframe shall constitute a waiver of the right to a grievance hearing.
    - .211    For purposes of this section, a complainant is deemed aware of the county decision when the county mails the notification as specified in Section 31-021.1 to the complainant's last known address.
    - .212    For individuals to whom no prior notification was mailed regarding his or her submission to the CACI, the individual shall file the completed SOC 834 form within thirty (30) calendar days of becoming aware that he or she is listed in CACI and becoming aware of the grievance process.
    - .213    A completed SOC 834 or a written request for grievance hearing form shall provide complete contact information, a reason for grievance which the complainant believes provides a basis for reversal of the county decision, and if represented, the name of the representative and contact information for the representative.
    - .214    The county shall assist the complainant in preparation of the request for grievance hearing if assistance is requested.

- .3 The following grievance hearing procedures shall only apply for challenges to county submission for listing individuals on the CACI.
- .31 A grievance hearing request shall be denied when a court of competent jurisdiction has determined that the suspected child abuse and/or neglect has occurred, or when the allegation of child abuse and/or neglect resulting in the referral to CACI is pending before the court.
- .311 If Section 31-021.31 no longer applies, a complainant can submit the completed SOC 834 form within thirty (30) calendar days of the conclusion of the judicial matter to request a grievance hearing.
- .312 Timeframes for conducting and completing a grievance hearing will remain as specified in Sections 31-021.4 through .85.
- .4 The grievance hearing shall be scheduled within ten (10) business days and held no later than sixty (60) calendar days from the date the request for grievance is received by the county, unless otherwise agreed to by the complainant and the county.
- .41 Notice of the date, time and place of the grievance hearing shall be mailed by the county to the complainant at least thirty (30) calendar days before the grievance hearing is scheduled, unless otherwise agreed to by the complainant and the county.
- .42 The complainant may have an attorney or other representative present at the hearing to assist him or her.
- .43 Either party may request a continuance of the grievance hearing not to exceed ten (10) business days. Additional continuance or dismissal of the hearing shall be granted with mutual agreement of all parties involved or for good cause.
- .44 The county may resolve a grievance at any point by changing a finding of inconclusive or substantiated child abuse and/or neglect to unfounded and notifying the DOJ of the need to remove the individual's name from the CACI.
- .5 The grievance review officer conducting the grievance hearing shall be:
- .51 A staff or other person not directly involved in the decision, or in the investigation of the action or finding, that is the subject of the grievance hearing.
- .52 Neither a coworker nor a person directly in the chain of supervision of any of the persons involved in the finding, or in the investigation of the action or finding, that is the subject of the grievance hearing unless the grievance review officer is the director or chief deputy director of the county.

HANDBOOK BEGINS HERE

- .521 For the purposes of this section, a coworker includes a staff person who has regular direct contact with the staff involved in the finding related to the grievance, and this person is unable to separate themselves as an impartial reviewer.

HANDBOOK ENDS HERE

- .53 A staff or other person who is knowledgeable of the child welfare services field and capable of objectively reviewing case information pertaining to the grievance.
- .6 The grievance review hearing shall be conducted in the following manner:
- .61 The grievance hearing shall, to the extent possible, be conducted in a non-adversarial environment.
- .62 The county, complainant and his or her representatives, if any, shall be permitted to examine all documents and relevant evidence that is not otherwise made confidential by law, which the opposing party intends to introduce at the grievance hearing.
- .621 The county and the complainant shall make available for inspection the documents and other evidence they intend to rely upon at the grievance hearing at least ten (10) business days prior to the hearing, to the extent permitted by law.
- (a) The county shall redact such names and personal identifiers from the documents and evidence as required by law and to protect the identity, health, and safety of those mandated reporters of suspected child abuse and/or neglect pursuant to Penal Code Section 11167. The county may further redact information regarding the mandated reporter's observations of the evidence indicating child abuse and/or neglect.
- .622 The county shall release disclosable information to the complainants' attorney or representative only if the complainant has provided the county with a signed consent to do so.
- .623 Witness lists shall be available for exchange in advance of the hearing. The county and the complainant shall provide a list of witnesses they intend to call at the grievance hearing at least ten (10) business days prior to the grievance hearing.
- .624 Failure to disclose evidence or witness lists in advance of the grievance hearing can constitute grounds for objecting to consideration of the evidence or allowing testimony of a witness during the hearing.

- .63 Each party and their attorney or representative, and witnesses while testifying, shall be the only persons authorized to be present during the grievance hearing unless all parties and the grievance review officer consent to the presence of other persons.
- .64 The information disclosed at the grievance hearing may not be used for any other purpose. No information presented at the grievance hearing shall be disclosed to any person other than those directly involved in the matter. Any documents or other evidence disclosed by the county to the complainant or the complainant's representative shall be returned to the county at the conclusion of the hearing.
- .65 All testimony shall be given under oath or affirmation.
- .66 The grievance review officer has no subpoena power. However, the parties may call witnesses to the hearing and question the witnesses called by the other party.
- .661 The grievance review officer may limit the questioning of the witness to protect the witness from unwarranted embarrassment, oppression, or harassment.
- .662 The grievance review officer may prevent the presence and/or examination of a child at the grievance hearing for good cause, including but not limited to protecting the child from trauma or to protect his or her health, safety, and/or well-being.
- .663 The grievance review officer may permit the testimony and/or presence of a child only if the child's participation in the grievance hearing is voluntary and the child is capable of providing voluntary consent.
- (a) The grievance review officer may interview the child outside the presence of county staff, complainant and/or any other party in order to determine whether the participation of the child is voluntary, or whether good cause exists for preventing the child from being present or testifying at the grievance hearing.
- .67 The county employee(s) who conducted the investigation that is the subject of the grievance hearing shall be present at the hearing if that person is employed by the county and is available to participate in the grievance hearing.
- .671 For purposes of this paragraph, a conflict in work assignments shall not render the county employee who conducted the investigation unavailable to participate in the hearing.
- .68 The county shall first present its evidence supporting its action or findings that are the subject of the grievance. The complainant will then provide evidence supporting his or her claim that the county's decision should be withdrawn or

changed. The county shall then be allowed to present rebuttal evidence in further support of its finding. Thereafter, the grievance review officer may, at his or her discretion, allow the parties to submit any additional evidence as may be warranted to fully evaluate the matter under review.

.681 The grievance review officer shall have the authority to continue to review for a period not to exceed ten (10) calendar days if additional evidence or witnesses are necessary to make a determination on the issue.

.7 The county shall have the proceedings of the grievance hearing audio recorded as part of the official administrative record. The county shall possess and maintain the administrative record of the grievance hearing.

.71 The complainant or the complainant's attorney and/or representative shall be entitled to inspect the transcript and/or recording, however the county shall keep possession of the transcript and recording and its contents will remain under seal.

.711 Where the complainant seeks to inspect the transcript, the costs for transcribing a recording of the hearing shall be assessed to the complainant.

.72 The county shall lodge the administrative record with the court if any party seeks judicial review of the final decision of the county director.

.8 Grievance hearing decisions shall be rendered as follows:

.81 The grievance review officer shall make a determination based upon the evidence presented at the grievance hearing, whether the allegation of child abuse and/or neglect is unfounded, inconclusive, or substantiated as defined by the Penal Code Section 11165.12.

.82 The grievance review officer shall render a written recommended decision within thirty (30) calendar days of the completion of the grievance hearing. The decision shall contain a summary statement of facts, the issues involved, findings, and the basis for the decision.

.83 The county director shall issue a final written decision adopting, rejecting, or modifying the recommended decision within ten (10) business days after the recommended decision is rendered. The county director shall explain why a recommended decision was rejected or modified.

.84 A copy of the decision shall be sent to the following:

.841 The complainant that requested the grievance hearing;

.842 The complainant's attorney or representative, if any; and

.843    The California Department of Social Services.

.85    If the complainant chooses to challenge the final decision of the county director, the evidence and information disclosed at the grievance hearing may be part of an administrative record for a writ of mandate and kept confidential. The administrative record shall be kept confidential, including, if any of the parties request, that it be filed with the court under seal.

.86    The grievance hearing administrative record shall be retained for a length of time consistent with current law, regulations, or judicial order which governs the retention of the underlying record, but not less than one year from the decision date in any circumstance, and shall include the documents and other information accepted as evidence at the hearing.

Authority Cited:    *Gomez v. Saenz* Settlement Agreement and Court Order, Case No: BC284896, *Nicholas v. CDSS and Marin County*, Case No. CIV092626 and Sections 10553 and 10554, Welfare and Institutions Code.

Reference:            Sections 11165.12, 11166(g) and 11167, Penal Code and Sections 827, 10850, and 16503, Welfare and Institutions Code.



Amend Section 31-410 to read:

31-410 TEMPORARY PLACEMENT (Continued)

31-410

.5 (Continued)

.51 The assessment shall include, but is not limited to, all of the following: (Continued)

.514 The results of a Child Abuse Central Index (CACI) check conducted on all persons 18 years of age and older residing in the home.

HANDBOOK BEGINS HERE

- (a) Penal Code Section ~~11170(b)(5)~~ 11170(c) in summary states that when Child Abuse Central Index information is released by the Department of Justice for temporary placement of a child, the child protective services agency or court investigator is responsible for notifying, in writing, the person listed in the Child Abuse Central Index that he/she is in the index. The notification shall include the name of the reporting agency and the date of the report.
- (b) Penal Code Section 11170(b)(610)(A) in summary requires persons or agencies who receive Child Abuse Central Index information for purposes of licensing, adopting or placing a child to obtain the underlying report from the reporting agency and make their own independent assessment regarding the quality of the evidence disclosed and its sufficiency for making decisions regarding the placement of a child which will be the most appropriate placement and in the best interest of the child. A CACI listing does not necessarily preclude placement with a relative or non-related extended family member. Instead, the relative or non-related extended family member may still be entitled to placement upon consideration of all relevant factors. These factors include but are not limited to the following:
  - (1) The nature of the substantiated or inconclusive child abuse/neglect report that led to the CACI listing;
  - (2) The period of time that has elapsed since the substantiated or inconclusive child abuse/neglect was committed and the number of offenses;
  - (3) The circumstances surrounding the commission of the substantiated or inconclusive child abuse/neglect that would demonstrate the likelihood of repetition; and

(4) Character references.

.52 (Continued)

HANDBOOK ENDS HERE

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code and Assembly Bill 1695, Section 21.

Reference: Sections 309 (as amended by Assembly Bill 1544, Chapter 793, Statutes of 1997), 319 (as amended by Senate Bill 2232, Chapter 1530, Statutes of 1990), 319(d) (as amended by Assembly Bill 1544, Chapter 793, Statutes of 1997), 309, 309(d), 319, 319(f), 361.2(h), 362.7, 727, 11402, and 16507.5(b) (as amended by Assembly Bill 1695, Chapter 653, Statutes of 2001), 361.2(b) and (g), 366(c), 11467.1, and 16501.1(c), Welfare and Institutions Code; Section 1530.8, Health and Safety Code; Sections ~~11170(b)(5)~~, and ~~11170(b)(610)(A)~~ and 11170(c) (as amended by Senate Bill 644, Chapter 842, Statutes of 1997), Penal Code; and 42 U.S.C. Section 675(1)(A).

Amend Section 31-501 to read:

## CHAPTER 31-500 SPECIAL REQUIREMENTS

### 31-501 CHILD ABUSE AND NEGLECT REPORTING REQUIREMENTS 31-501

- .1 The county shall report by telephone, fax or electronic submission every known or suspected instance of child abuse and/or neglect as defined in Penal Code Section 11165.6, to law enforcement departments and the District Attorney's Office as specified in Penal Code Section 11166(gi).

#### HANDBOOK BEGINS HERE

Penal Code Section 11165.6 defines child abuse or neglect to include physical injury or death inflicted by other than accidental means upon a child by another person, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, the willful harming or injuring of a child or the endangering of the person or health of a child, as defined in Section 11165.3, and unlawful corporal punishment or injury as defined in Section 11165.4. "Child abuse or neglect" does not include a mutual affray between minors. "Child abuse or neglect" does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

#### HANDBOOK ENDS HERE

- .2 When the county receives a report of known or suspected child abuse and/or neglect that has ~~allegedly~~ occurred in a licensed facility, the county shall, ~~as specified in Penal Code Sections 11166.1 and 11166.2,~~ notify the licensing office with jurisdiction over the facility, as specified in Penal Code Sections 11166.1 and 11166.2.
- .3 When the county receives a report of known or suspected child "abuse or neglect in out-of-home care," including a child placed in the home of a relative or non-related extended family member, the county shall create a new referral.
  - .31 The county shall respond to all referrals of "abuse or neglect in out-of-home care" in accordance with the provisions of Section 31-101.
  - .32 A disposition of the investigation shall be recorded in the child's case record.
- .34 The county shall submit a report to the Department of Justice (DOJ) pursuant to Penal Code Section 11169 ~~to the Department of Justice~~ of every case it investigates of known or suspected child abuse that it has determined ~~not to be unfounded~~ to be inconclusive or substantiated as defined in Penal Code Section 11165.2.

.41 The county shall not submit a report to the DOJ for referrals it investigates and the only allegation substantiated is general neglect or the only incident is a positive toxicology screening at the time of delivery, as specified in Penal Code Sections 11165.2(b) and 11165.13.

.42 The county shall ensure that the report submitted to the DOJ is complete and is in conformity with the California Code of Regulations, Title 11.

HANDBOOK BEGINS HERE

.421 The California Code of Regulations, Title 11, Standard Reporting Form for Reports of Child Abuse Maintained in the Automated Child Abuse System (ACAS) states:

(a) The "Child Abuse Summary Report: Form SS 8583 is the standard reporting form required to report investigative summaries of suspected incidents of child abuse and severe neglect to ACAS. Reporting agencies shall submit Form SS 8583 to DOJ after an active investigation has been conducted and the incident has been determined not to be unfounded. Reporting agencies must obtain and use the most recent version of the SS 8583 when submitting the report to DOJ.

HANDBOOK ENDS HERE

~~.3143 The county shall make information received from the Department of Justice available as specified in Penal Code Section 11170(b)(1). The county shall make information received from DOJ pursuant to Penal Code Section 11170(b)(1) available to the persons or agencies as specified in that section.~~

.5 Within five (5) business days of the county submitting information to the DOJ to list an individual's name on the Child Abuse Central Index (CACI), the county shall provide to that individual written notification, which shall contain the following information and materials:

.51 The completed SOC 832, as defined in Section 31-003(s)(2), notification that the county has completed an investigation of suspected child abuse and/or severe neglect, which the county has determined to be either inconclusive or substantiated, and has submitted the individual's name to the DOJ for listing on the CACI;

.511 The completed SOC 832 shall include the victim's name, and a brief description of the alleged abuse and/or severe neglect, and the date and location where this occurred;

.52 The SOC 833, as defined in Section 31-003(s)(3), information explaining the individual's right to request a grievance hearing, and the procedures for the hearing;

.53 The SOC 834, as defined in Section 31-003(s)(4), a request for grievance hearing;

.531 A completed SOC 834 shall include county contact person, reason for grievance, information regarding an attorney or representative for the individual if any, and the address where to submit the request for grievance hearing.

.54 The SOC 832, 833 and 834 shall be mailed to the last known address where the notice and request for grievance are most likely to be received by the individual.

.6 An individual wishing to challenge his or her referral to the CACI may request a grievance hearing utilizing the procedures under Section 31-021. The county may initiate an internal review relating to the matter identified in the request prior to the hearing.

.7 Where the county's finding of inconclusive or substantiated for abuse and/or severe neglect is changed to unfounded as a result of the grievance hearing or internal review, or a judicial determination of factual innocence of all of the investigated allegations that supported the county's decision to refer the individual's name to the DOJ for listing on CACI, the county shall within five business days submit to the DOJ a revised Form SS 8583 containing the change in finding.

.71 Where the county's finding of inconclusive or substantiated child abuse and/or neglect is changed to a finding other than unfounded as a result of the grievance hearing, the county shall within five business days submit to the DOJ a revised Form SS 8583 containing the change in finding.

.8 The county shall document the outcome of the grievance hearing and any change in the finding of an allegation, if any, within the child's case record.

Authority Cited: Sections 10553 and 10554, Welfare and Institutions Code, *Gomez v. Saenz Settlement Agreement* and Court Order, Case No: BC284896 and *Nicholas v. CDSS and Marin County*, Case No. CIV092626.

Reference: Sections 11165.12, 11165.5, 11165.6, 11166, 11166.1, 11166.2, 11166.3, 11169, and 11170(b)(1), Penal Code.

**NOTICE OF CHILD ABUSE CENTRAL INDEX LISTING**

NAME OF ALLEGED SUSPECT

COUNTY OF

The \_\_\_\_\_ County Child Welfare Services agency has completed an investigation of alleged child abuse or neglect and determined that the allegations of abuse or neglect are either inconclusive or substantiated. Pursuant to Penal Code Section 11169(b), this is notice that the finding of inconclusive or substantiated abuse or neglect was sent to the California Department of Justice (DOJ) for inclusion in the Child Abuse Central Index (CACI). The CACI contains certain information that enables authorized entities to locate investigations of alleged child abuse or neglect conducted by county child welfare departments.

Law enforcement agencies, court investigators, probation departments and district attorneys may use the CACI when investigating allegations of child abuse or neglect. The CACI is also used by licensing agencies and county welfare agencies to investigate persons who apply for licenses to care for children. If any of these agencies receive information from the CACI that there was a prior investigation of child abuse or neglect, they are required to investigate the child abuse or neglect allegation(s).

**REPORTS OF SUSPECTED CHILD ABUSE MAINTAINED BY DOJ ARE CONFIDENTIAL AND MAY ONLY BE DISCLOSED TO STATUTORILY AUTHORIZED PARTIES (PENAL CODE SECTION 11167.5).**

The County has determined that the allegation of child abuse or neglect against you is:

☐ Inconclusive

or

☐ Substantiated

An inconclusive finding is defined by Penal Code Section 11165.12(c) to mean that the investigator who conducted the investigation determined that the allegation of abuse or neglect was not unfounded but there is insufficient evidence to determine whether child abuse or neglect has occurred.

A substantiated finding is defined by Penal Code section 11165.12(b) to mean that the investigator who conducted the investigation determined that, based upon the evidence, it was more likely than not that child abuse or neglect occurred.

**The term child abuse and neglect is defined by Penal Code section 11165.6. This determination is based on the following information discovered during the investigation:**

NAME OF ALLEGED VICTIM(S):

DATE(S) AND LOCATION(S) THE ALLEGED ABUSE OR NEGLECT OCCURRED:

THE SPECIFIC ACT(S) OF ABUSE OR NEGLECT ALLEGED AGAINST YOU IS/ARE AS FOLLOWS:

REFERRAL NUMBER:

No action on your part is required at this time. However, if you want to challenge your listing on the CACI, you must complete the enclosed Request for Grievance Hearing form, and mail it to the following address:

You must mail the completed Request for Grievance Hearing form no later than 30 days from the date of this notice. As part of the grievance hearing procedures, you may inspect or receive a copy of the investigative report into this matter, which may be altered to remove information that the county is not authorized to provide to you. This information may be requested by checking the box under the signature line of the Request for Grievance Hearing form. For more information, you can contact:

COUNTY STAFF PERSON:

PHONE

DATED

( )

## GRIEVANCE PROCEDURES FOR CHALLENGING REFERENCE TO THE CHILD ABUSE CENTRAL INDEX

1. Within five (5) business days of the county submitting information to the Department of Justice (DOJ) to list an individual on the Child Abuse Central Index (CACI), the county shall provide to the listed person written notice, which shall contain the following information and materials:
  - a. That the county has completed an investigation of suspected child abuse or neglect that the county has determined to be either inconclusive or substantiated, and has referred the individual to DOJ for listing on the CACI;
  - b. The victim's name, a brief description of the alleged abuse or neglect and the date and location it occurred;
  - c. The individual's right to request a grievance hearing;
  - d. A county contact person;
  - e. A *Request for Grievance Hearing form*;
  - f. A copy of these grievance procedures

The notice required by this section may be satisfied by mailing the *Notice of Child Abuse Central Index Listing* and the *Request for Grievance Hearing* forms. The forms shall be mailed to the last known address of the individual or any other address known by the county where the notice and request for grievance are most likely to be received by the individual.

2. An individual wishing to challenge his or her reference to the CACI may request a grievance hearing pursuant to the following procedure. This does not preclude the county from initiating an internal investigation to address or rectify the matter identified in the request for grievance prior to the hearing. The county may resolve a grievance at any point by modifying a finding of inconclusive or substantiated abuse or neglect to unfounded and notifying DOJ of the need to remove the individual's name from the CACI.
  - a. A grievance shall be initiated by the individual submitting a written and signed *Request for Grievance Hearing*.
  - b. The *Request for Grievance Hearing* shall set forth the facts which the individual believes provides a basis for reversal of the county's finding of inconclusive or substantiated abuse.
  - c. The individual shall mail a completed *Request for Grievance Hearing* form to the county within thirty (30) calendar days of the date that the *Notice of Child Abuse Central Index Listing* and *Request for Grievance Hearing* forms were mailed to the individual identified as the perpetrator of the alleged abuse or serious neglect. Failure to mail the *Request for Grievance Hearing form* within the prescribed time-frame shall constitute waiver of the right to a grievance.
  - d. For individuals to whom no prior notification was mailed regarding his or her referral to the CACI, the individual shall file the request for grievance within 30 calendar days of becoming aware that he or she is listed on the CACI and becoming aware of the grievance process.
  - e. No grievance hearing shall be required when a court of competent jurisdiction has determined that the suspected abuse or neglect has occurred, or when the allegation of child abuse or neglect resulting in the referral to the CACI is pending before the court.
  - f. When an individual requests, the county shall assist the individual in the completion of the form necessary to initiate the request for grievance.
3. The grievance hearing shall be scheduled within ten (10) business days and held no later than sixty (60) calendar days from the date the *Request for Grievance Hearing form* is received by the county, unless otherwise agreed to by the individual and the county.
  - a. Notice of the date, time and place of the grievance hearing shall be mailed by the county to the individual requesting the grievance hearing (the complainant) at least 30 calendar days before the grievance hearing.
  - b. The complainant may have an attorney or other representative present at the hearing to assist him or her. The county shall release disclosable information to such attorney or representative only if the individual has provided the county with a signed authorization to do so.
  - c. Either party may request a continuance of the grievance hearing not to exceed ten (10) business days. Additional continuances, or dismissal of the hearing, shall be granted with mutual agreement of all parties involved, or for good cause.
4. The review of the social worker's finding of inconclusive or substantiated abuse or neglect shall be conducted as follows:
  - a. The grievance officer conducting the grievance hearing shall be:
    - i. A staff or other person not involved in the investigation of the alleged child abuse or neglect.
    - ii. Neither a co-worker nor a person directly in the chain of supervision of any of the persons involved in the investigation of the alleged abuse or neglect unless the grievance officer is the director or chief deputy director of the county.
    - iii. Knowledgeable in the field of child abuse or neglect investigations and capable of objectively reviewing the complaint.
  - b. The grievance hearing shall be, to the extent possible, conducted in a nonadversarial atmosphere.
  - c. Each party and their attorney or representative shall be permitted to examine the documents and other evidence which the opposing party intends to introduce at the grievance hearing. All relevant evidence, whether inculpatory or exculpatory, should be permitted to be examined in advance of the hearing. Witness lists shall be available for exchange in advance of the hearing. Failure to disclose evidence or witness lists in advance of the hearing can constitute grounds for objecting to consideration of the evidence at the hearing or to hearing the testimony of a witness during the hearing. Any documents or other evidence disclosed by the county to the complainant and/or his or her attorney or representative for the hearing shall be returned to the county at the conclusion of the hearing.
    - i. The county and the complainant shall make available for inspection the documents and other evidence they intend to rely upon at the grievance hearing at least ten (10) business days prior to the hearing, to the extent permitted by law.

- ii. The county and the complainant shall make available to the other party a list of witnesses they intend to call at the grievance hearing at least ten (10) business days prior to the grievance hearing, to the extent permitted by law.
  - iii. The county may redact such names and personal identifiers from the documents and evidence as required by law and to protect the identity, health, and safety of those reporting the suspected abuse or neglect and providing information regarding their observations of the evidence indicating abuse or neglect.
  - d. Each party and their attorney or representative, and witnesses while testifying, shall be the only persons authorized to be present during the hearing unless all parties and the grievance officer consent to the presence of other persons. The information disclosed at the grievance hearing may not be used for any other purpose. The parties agree that no information presented at the grievance hearing will be disclosed to any person other than those directly involved in the matter. The evidence and information disclosed at the hearing may be part of an administrative record for a writ of mandate challenging the final decision of the County Director. The administrative record shall be kept confidential, including, if any of the parties request, that it be filed with the court under seal.
  - e. All testimony shall be given under oath or affirmation. The grievance officer has no subpoena power. However, the parties may call witnesses to the hearing and question the other party's witnesses. The grievance officer may limit the questioning of a witness to protect the witness from unwarranted embarrassment, oppression or harassment.
    - i. The grievance officer may prevent the presence and /or examination of a child at the grievance hearing for good cause, including but not limited to protecting the child from trauma or to protect his or her health, safety, and/or well-being. The grievance officer may permit the testimony and/or presence of a child only if the child's participation in the grievance is voluntary and the child is capable of providing voluntary consent. The grievance officer may interview the child outside the presence of the parties in order to determine whether the child's participation is voluntary or whether good cause exists for preventing the child from being present or testifying at the hearing.
    - ii. The county employee who conducted the investigation into the suspected child abuse or neglect shall be present at the hearing if that person is employed by the county, and is available to participate in the grievance. For purposes of this paragraph, a conflict in work assignments shall not render the county employee who conducted the investigation unavailable to participate in the hearing.
  - f. The county shall first present its evidence supporting its findings of inconclusive or substantiated abuse or neglect. The complainant will then provide his or her evidence supporting his or her claim that the county's finding should be withdrawn or changed. The county shall then be allowed to present rebuttal evidence in further support of its finding. Thereafter, the grievance officer may, at his or her discretion, allow the parties to submit any such additional evidence as may be warranted to fully evaluate whether a finding of inconclusive or substantiated abuse is warranted.
  - g. The grievance officer shall have the authority to continue the hearing for a period not to exceed ten (10) calendar days if additional evidence or witnesses are necessary for determination of the issue.
  - h. The grievance officer shall determine, based upon the evidence presented, whether the allegation of abuse or neglect is unfounded, inconclusive or substantiated as defined by the California Penal Code.
  - i. The County shall have the proceedings audio recorded as part of the official administrative record. The county shall possess and maintain the administrative record of the hearing. The complainant or the complainant's attorney shall be entitled to inspect the transcript and/or recording, however the county shall keep possession of the transcript and tape and its contents will remain under seal. Where the complainant seeks to inspect the transcript, the costs for transcribing a recording of the hearing shall be assessed to the complainant. The county shall lodge the administrative record with the court if any party seeks judicial review of the final decision of the County Director.
5. Grievance hearing decisions shall be rendered as follows:
- a. The grievance officer shall render a written recommended decision within 30 calendar days of the close of the grievance hearing. The decision shall contain a summary statement of the facts, the issues involved, findings, and the basis for the decision. The County Director shall issue a written final decision adopting, rejecting, or modifying the recommended decision within ten (10) business days after the recommended decision is issued. The County Director shall explain why a recommended decision was rejected or modified.
  - b. The final decision shall be based upon the evidence presented at the hearing.
  - c. A copy of the recommended and final decision shall be sent to the following:
    - i. Each complainant that requested a grievance hearing;
    - ii. The complainant's attorney or representative, if any; and
    - iii. The California Department of Social Services.
  - d. Where the county's finding of inconclusive or substantiated abuse or neglect is changed as a result of the grievance hearing, the county shall advise DOJ of the change and request that the complainant's name be removed from the CACI or that the designation of inconclusive or substantiated abuse or neglect be changed accordingly.
6. The hearing record shall be retained for a length of time consistent with current law, regulations, or judicial order which governs the retention of the underlying record, but not less than one year from the decision date in any circumstance, and shall include the documents and other evidence accepted as evidence at the hearing.



**REQUEST FOR GRIEVANCE HEARING**

REFERRAL NUMBER	COUNTY OF
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**No grievance hearing shall be required when a court of competent jurisdiction has determined that the suspected abuse or neglect has occurred, or when the allegation of child abuse or neglect resulting in the referral to the Child Abuse Central Index is pending before the court.**

**A. CONTACT INFORMATION**

NAME:	DATE OF BIRTH
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STREET ADDRESS:

CITY:	STATE:	ZIP CODE:
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TELEPHONE NUMBER: (     )	ALTERNATE NUMBER: (     )
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**I hereby request a grievance hearing to dispute the decision to list my name on the Child Abuse Central Index (CACI). I acknowledge that I have received a copy of the Notice of Child Abuse Central Index Listing and a copy of the Grievance Hearing Procedures.**

**B. REASON FOR GRIEVANCE**

The reason I am requesting a grievance hearing is because **(YOU MUST CHECK AT LEAST ONE)**:

- ☐ I am not the person who committed the alleged act(s) of abuse or neglect.
- ☐ The alleged act(s) of abuse or neglect did not occur.
- ☐ Even if the alleged act(s) occurred, these acts are not abuse or neglect within the meaning of the Child Abuse and Neglect Reporting Act.
- ☐ Other. If this box is checked, please explain below. If you need more space for your explanation, you may attach additional pages to this form.

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SIGNATURE:	DATED:
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- ☐ Check this box if you would like to schedule an appointment so that you can examine the evidence the county intends to present at the grievance hearing in support of its finding of inconclusive or substantiated abuse or neglect. At this appointment, you must also bring and disclose to the county all the evidence that supports your claim that you should not be listed on the CACI.

You may have an attorney or other representative present at the hearing to assist you. If you intend to have an attorney or other representative present, please provide us with the following information.

**C. ATTORNEY/REPRESENTATIVE INFORMATION**

ATTORNEY OR REPRESENTATIVE'S NAME:	PHONE NUMBER: (     )
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ATTORNEY OR REPRESENTATIVE'S ADDRESS:

**Please return this Request for Grievance to this address:**

Address:

Attn:

## FINDING OF EMERGENCY

These regulations are being implemented on an emergency basis for the immediate preservation of the public peace, health and safety, or general welfare, within the meaning of Government Code Section 11346.1.

## DESCRIPTION OF SPECIFIC FACTS WHICH CONSTITUTE THE EMERGENCY

1. In October of 2007, The Los Angeles Superior Court entered its Order in the matter of *Amelia Gomez v. Bill Lockyer and Rita Saenz*. This Order mandated the California Department of Social Services (CDSS) to implement specified grievance procedures for challenging reference to the Child Abuse Central Index (CACI). On January 15, 2009, the United States Court of Appeals for the Ninth Circuit issued its decision in the matter of *Humphries v. County of Los Angeles*. In its decision, the Ninth Circuit found unconstitutional the reference of an individual's name for listing on the CACI without due process. On May 29, 2009, CDSS received notice of a lawsuit filed against Marin County and CDSS, in the matter of *Nicholas v. CDSS; Marin County*. In this lawsuit, petitioner challenges the Notice of Child Abuse Central Index listing and grievance hearing procedures established pursuant to All-County Letter No. 07-53 (December 17, 2007).
2. These emergency regulations establish the processes required to be implemented by county welfare departments (CWDs) to comply with the constitutional requirements attendant to reference of an individual's name for listing on the CACI pursuant to Penal Code Section 11169. Welfare and Institutions Code Section 361.4(c) requires the county social worker to cause a check of the CACI for all adults living in the home whenever a child may be placed in the home. Health and Safety Code Section 1522(b) requires the Community Care Licensing (CCL) Division of CDSS to conduct a check of the CACI prior to issuing a license to care for children. A failure or delay by the CWD to comply with the constitutional requirement for due process when referring an individual's name for listing on the CACI could result in a court decision invalidating the CACI. Alternatively, a failure or delay by the CWD to comply with the constitutional requirement for due process when referring an individual's name for listing on the CACI could result in a court decision preventing both the county social worker and the CCL Division from accessing the CACI. Either of these developments would create an immediate risk to CDSS' ability to preserve public health and safety of children placed in licensed or approved foster care homes, and licensed child care facilities. Lack of effective regulations will also leave the State and counties vulnerable to legal action.
3. The emergency regulations establish a clear process for CWDs to utilize when fulfilling their legal obligations under Penal Code Section 11169. The regulations provide for notice to the individual whose name the county is referring to the Department of Justice for listing on the CACI, and for the opportunity for that individual to challenge that action before an independent grievance officer.

4. A delay in implementing these regulations may result in court action invalidating the CACI, or a court action preventing CDSS and CWDs from accessing information on the CACI, as required by statute.

#### INFORMATIVE DIGEST

In 2004, the California Department of Social Services (CDSS) was party to a lawsuit, *Gomez v. Saenz*, which alleged that individuals' names were submitted to the Child Abuse Central Index (CACI), a child abuse registry maintained by the California Department of Justice, without a right to challenge the placement, which the plaintiff alleged was a violation of due process guarantees of the California Constitution. In addition, the lawsuit challenged the accuracy of information retained on the CACI, alleging that a significant number of listings were maintained on the CACI without adequate underlying files to support the listing. This lawsuit was settled in October 2007 and as part of the agreement between the parties, CDSS agreed to amend current regulations to reflect the new grievance hearing procedures as required by the settlement.

Pursuant to Penal Code Section 11169, an individual's name is submitted to the CACI whenever a county child welfare services (CWS) agency determines that a child abuse and/or neglect (excluding general neglect) allegation regarding that individual is found to be inconclusive or substantiated. Prior to *Gomez v. Saenz*, individuals did not have the opportunity to challenge their listing. This settlement agreement provides individuals with due process by allowing them to dispute their listing on the CACI. The settlement agreement further stipulates that county CWD agencies are to furnish a request for grievance hearing and notice of listing on CACI forms to persons subject to listing on CACI.

The stipulation to create regulations based on *Gomez v. Saenz* requires the adoption of a new section in the Manual of Policies and Procedures, Division 31 regulations. In addition, amendments to other portions of Division 31 were necessary to provide consistency and to accurately reflect the due process requirements pursuant to the *Gomez v. Saenz* settlement agreement.

The settlement agreement includes specific language that explains the procedures to provide due process for individuals listed on CACI. Significant additions to these regulations include: 1) grievance request procedures, 2) grievance hearing procedures, and 3) procedures for grievance review decisions.

Section 31-003 provides definitions for the new notification forms required by the settlement agreement.

Section 31-021 provides detailed grievance hearing procedures.

Section 31-410 of Division 31 regulations outlines special requirements for notifying individuals of their listing on the CACI. Additional information is included to specify that a substantiated CACI listing does not preclude temporary placement of a child with a relative or non-relative extended family member.

Section 31-501 of Division 31 regulations outlines special requirements for reporting child abuse and neglect to the California Department of Justice. Amendments to this section are needed to include new procedures and handbook information defining child abuse or neglect requirements as stipulated in the *Gomez v. Saenz* lawsuit settlement agreement.

#### COST ESTIMATE

1. Costs or Savings to State Agencies: The May Revision includes \$2.3 million total funds (\$1.6 million general fund) for the anticipated costs under the Gomez vs. Saenz premise.]
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance With Government Code Sections 17500 - 17630: None.
3. Nondiscretionary Costs or Savings to Local Agencies: Additional expenditures of approximately \$700,000 in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation implements the court mandate set forth by the Superior Court of California court in the case of Gomez vs. Saenz.
4. Federal Funding to State Agencies: No fiscal impact exists because this regulation does not affect any federally funded State agency or program.

#### LOCAL MANDATE STATEMENT

The addition to Division 31, Section 31-021 (Child Abuse Central Index [CACI] Grievance Review Procedures), the amendments to Division 31, Section 31-501 (Child Abuse and Neglect Reporting Requirements), and the amendments to Division 31, Section 31-410 (Temporary Placement) will impose mandates on local county child welfare agencies.

These regulations will require additional workload for the agencies. The additional activities include noticing individuals of their listing on the CACI, preparing for and performing grievance hearings as requested, and other documentation as specified in the regulations. This will create additional costs for the local CWS agencies.

At this time, it is unknown what fiscal impact these new regulations will have on the CDSS. County CWS agencies are currently time-studying grievance hearing activities to a Program Code created specifically for this purpose.

#### AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Sections 10553, 10554, and 10850.4, Welfare and Institutions Code; *Gomez v. Saenz* Settlement Agreement and Court Order, Case No: BC284896, and *Nicholas v. CDSS and Marin County*, Case No: CIV092626. Subject regulations implement and make specific Section 827, Welfare and Institutions Code; Penal Code Sections 11165.5, 11165.12, 11166(g), 11166.3, 11167, and 11169.